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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC MAIL SECTION
FCC 93-467

Oct 7 3 13 PM '93

In the Matter of

Implementation of the
Cable Television Consumer
Protection and Competition
Act of 1992

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MM Docket 92-259

DISPATCHED BY

STAY ORDER

Adopted: October 5, 1993

; Released: October 5, 1993

By the Commission:

1. On March 11, 1993 the Commission adopted a Report and Order¹ in this proceeding to implement the mandatory television broadcast signal carriage ("must-carry") and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act").² We have received two separate requests seeking relief from two different provisions of our rules which were adopted in from this proceeding. The Wireless Cable Association ("WCA") and the National Private Cable Association ("NPCA") filed an Emergency Motion for Partial Stay on September 29, 1993, requesting that the Commission stay the effectiveness of the specific provisions of Section 76.64(e), pending the Commission's decision on WCA's Petition for Partial Reconsideration, which requests a revision of this rule.³ In an Emergency Petition for Temporary Waiver filed on August 4, 1993, Media-Com Television, Inc. ("Media-Com") seeks a temporary waiver of Section 76.62(e) pending the Commission's action on petitions

¹ Report and Order in MM Docket 92-259, 8 FCC Rcd 2965 (1993). See also, Clarification Order, 8 FCC Rcd 4142 (1993), and Order, 58 FR 40366 (July 28, 1993).

² Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, §§4-6, 106 Stat. 1460 (1992).

³ The Wireless Cable Association filed a Petition for Partial Reconsideration on May 3, 1993. The National Cable Television Association and Time Warner filed Oppositions to the Wireless Cable Association's Petition for Partial Reconsideration. The specific requests for a revision of this rule will be addressed by the Commission in a separate order, along with other issues raised by the parties in the petitions for reconsideration.

for reconsideration requesting modification of this rule with respect to signals carried pursuant to retransmission consent agreements.⁴ Because both of these requests relate to the retransmission consent provisions of our rules, which will become effective October 6, 1993, we will address both requests herein.

2. With respect to the WCA and NPCA's request, Section 76.64(e) of the Commission's rules provides that the "[p]rovision of local broadcast signals by master antenna television (MATV) facilities or by VHF/UHF antennas on individual dwellings is not subject to retransmission consent, provided that these signals are available without charge at the residents' option. That is, the antenna facilities must be owned by the individual subscriber or building owner and not under the control of the multichannel video programming distributor." WCA and NPCA request that the Commission exclude from retransmission consent requirements those wireless cable and private cable systems that provide access to VHF/UHF rooftop antennas at no charge, regardless of antenna ownership, until the Commission addresses the requested revision to this rule.

3. In their motion, WCA and NPCA argue that ownership or control of the antenna should not be the determining factor as to whether retransmission consent must be obtained. Instead, they argue that as long as the broadcast signals are provided free of charge, over a VHF/UHF antenna, then the ownership of the antenna should not matter. WCA and NPCA point to the unintended affects which the current version of the rule will have on wireless and private cable operators. Most specifically, even where a wireless operator has obtained the consent of all but one local broadcaster for the retransmission of their signals, if one broadcaster in the market refuses consent, such refusal will effectively negate the consent of all other broadcasters. The wireless or private cable operator would immediately be forced to disable or retrieve all of the VHF/UHF antennas in the field. WCA and NPCA further claim that the inability of a wireless or private cable operator to provide a common VHF/UHF antenna to homeowners, even without charge, to improve reception of local broadcast signals would seriously jeopardize the continued viability of most wireless or private cable operators. Alternatively, the wireless or private cable operator must immediately transfer ownership and control of the antennas to each individual subscriber, at a significant financial loss to the operator, who generally reuses such equipment at the termination of service. If the subscriber is asked to pay the operator for the antenna, WCA and NPCA claim, most subscribers will discontinue service.

⁴ Newhouse Broadcasting Corporation and Columbia International, L.P. addressed this issue in their petitions for reconsideration. Media-Com filed comments supporting these petitioners on this issue on May 28, 1993.

4. We are persuaded by the evidence submitted by WCA and NPCA that wireless and private cable operators have raised issues which warrant further consideration, due to the detrimental consequences to wireless and private cable systems. We are also persuaded that these operators may be threatened with an imminent loss either of their subscriber base, if retransmission consent cannot be obtained from all local broadcasters, or from the forced transfer of ownership of the VHF/UHF antenna equipment. Accordingly, we will grant the request and stay the provisions of Section 76.64(e) of our rules as it applies to wireless and private cable operators who are providing local broadcast signals via a VHF/UHF antenna for which no charge is made to the subscriber, until such time as we have addressed the issue in the pending petition for reconsideration. Our action is intended to provide us with an opportunity to fully consider the specific issues raised and the oppositions thereto. It also is intended to provide wireless and private cable operators with an opportunity to continue retransmission consent negotiations. We note that no television broadcast stations or associations have objected to the relief requested. We emphasize that this stay is limited both in duration and scope, and is being granted in response to the specific showing of imminent harm on the part of WCA and NPCA. We are cognizant of the oppositions filed by NCTA and Time Warner to WCA's Petition for Partial Reconsideration and we will address those concerns more fully when we act on that petition.

5. With respect to Media-Com's request for waiver, Section 76.62(a) requires the carriage of the entire program schedule of any television station carried by a cable system.⁵ This requirement covers stations carried pursuant to retransmission consent agreements as well as must-carry stations.⁶ The only exception to the "carriage in its entirety" requirement is that specific programming that is prohibited under Section 76.67 (sports blackout rule) or subpart F of Part 76 of our rules (network nonduplication and syndicated exclusivity).

6. Media-Com is the licensee of low power television station W29AI, Akron, Ohio. W29AI has been carried on the Warner Cable system serving Summit County, Ohio, including Akron, on a part-time basis under a private agreement. The programming carried by this cable system is locally-produced and community-oriented. While Warner has notified Media-Com that it wishes to continue carriage of this locally-produced programming, it has indicated that it has no interest in carrying the syndicated programming broadcast by W29AI. Thus, Warner believes that a strict reading of Section 76.62(a) requires it to terminate its carriage agreement with the station.

⁵ 47 C.F.R. §76.62(a).

⁶ See 8 FCC Rcd 3003-3004.

7. Media-Com requests a temporary waiver to permit Warner Cable to continue carrying its station's locally-originated programming until the resolution of the matter on reconsideration. Media-Com states that the waiver is needed to avoid an interim loss to the public of its present cable access to the locally-produced programming broadcast by W29AI. Media-Com notes that this programming, which includes local news, talk, information, religious and sports programs, is community-oriented and often unique. In some cases, W29AI is the only source of up-to-the-minute coverage of important local news stories.⁷ Thus, it argues, the requested waiver serves the public interest and should be granted.

7. We are persuaded by the evidence submitted by Media-Com that its station provides programming that serves the needs of subscribers to the Warner Cable system in Summit County. We also believe that there may be other similar arrangements between broadcasters and cable operators which have long benefitted the subscribers of cable systems and which would be affected in the same manner as Media-Com. As we have not had an opportunity to fully reconsider this issue, a stay will prevent any disruption of this programming service. Moreover, we note that Warner Cable has not opposed this request, and, indeed, appears willing to continue the carriage of this locally-produced programming. We believe that other cable operators would similarly welcome the opportunity to maintain the status quo in this regard, pending our decision on reconsideration. In addition, we are concerned that absent a stay of our rule, Media-Com and similarly situated parties will have difficulty regaining carriage if the system is forced to remove the signal due to the provisions of this rule, and petitioners are subsequently successful on the merits of the petitions for reconsideration. Accordingly, on our own motion, we will stay the provisions of Section 76.62(a) of our rules as it applies to existing arrangements between broadcasters and cable operators for partial carriage until resolution of this matter in the pending reconsideration proceeding. Our action is intended to provide us an opportunity to fully consider the specific issues described above. We emphasize that this stay is limited both in duration and scope and is being granted in response to a specific showing of imminent loss of local programming.

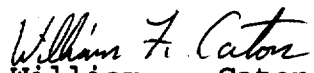
5. Accordingly, IT IS ORDERED that pursuant to Section 4(i) and 4(j) of the Communications Act of 1934, as amended, the provisions of Sections 74.64(e) and Section 76.62(a) of the Commission's rules are STAYED until the release date of the Commission's Reconsideration Order in MM Docket No. 92-259 only to the extent provided herein with respect to the issue of antenna ownership and the issue of the continued validity of existing

⁷ Media-Com cites its extended live coverage of the recent Lucasville Prison riot as an example.

arrangements between broadcasters and cable operators for partial carriage of the broadcaster's signal.

6. For further information on this proceeding, contact Elizabeth W. Beaty, Mass Media Bureau, (202) 416-0856.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary